

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2178

MARCH 31, 1975

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1. COURT DECISIONS - STATE OF NEW JERSEY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL
v. MAYWOOD INN CORPORATION - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1774-73

STATE OF NEW JERSEY, DIVISON OF
ALCOHOLIC BEVERAGE CONTROL,

Plaintiff-Respondent,

v.

MAYWOOD INN CORPORATION,

Defendant-Appellant.

Submitted February 11, 1975 - Decided February 18, 1975

Before Judges Carton, Crane and Kole.

On appeal from Order of the Acting Director of Alcoholic Beverage Control.

Messrs. Russell and McAlevy, attorneys for appellant (Mr. Dennis D. S. McAlevy on the brief).

Mr. William F. Hyland, Attorney General of New Jersey, attorney for respondent (Mr. David S. Piltzer, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Maywood Inn Corporation, Bulletin 2138, Item 4. Division affirmed. Opinion not approved for publication by the Court Committee on Opinions).

2. COURT DECISIONS - HUTCHINS, ET AL. v. NEWARK ET AL. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1866-73

FRANK HUTCHINS, et als.,

Plaintiffs-Appellants,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF NEWARK and
ROSE PRUNTY, t/a LITTLE NATE'S TAVERN,

Defendants-Respondents.

Submitted February 10, 1975 - Decided February 27, 1975.

Before Judges Leonard, Seidman and Bischoff.

On appeal from Division of Alcoholic Beverage Control.

Ms. Catherine P. Mitchell, Legal Action Workshop,
attorney for appellants.

Mr. Donald E. King, attorney for respondent Municipal Board
of Alcoholic Beverage Control (Mr. John C. Pidgeon, on the brief).

A statement in lieu of brief was submitted by Mr. William F. Hyland,
Attorney General, attorney for Division of Alcoholic Beverage
Control (Mr. David S. Piltzer, Deputy Attorney General, of counsel).

(Appeal from the Director's decision in Re Hutchins, et als. v.
Newark, et al, Bulletin 2141, Item 1. Director affirmed.
Opinion not approved for publication by the Court Committee
on Opinions).

3. APPELLATE DECISIONS - MUÑOZ v. PATERSON.

Manuel Muñoz, t/a The Oasis,)
)
)
Appellant,) On Appeal
v.)
Board of Alcoholic Beverage) CONCLUSIONS
Control for the City of Paterson,) AND
)
)
)
Respondent.)
Joseph M. Keegan, Esq., Attorney for Appellant
Joseph A. LaCava, Esq., by Ralph L. DeLuccia, Jr., Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appellant is the holder of a plenary retail distribution license and operates a facility in Paterson. On June 19, 1974 or shortly thereafter, he received a letter from the Paterson Redevelopment Agency advising him that the building which housed his store would be acquired by the Agency and he would be required to relocate his business.

On August 13, 1974 he obtained an agreement with the owner of a building around the corner from his present premises allowing him to become a tenant. He applied for a place-to-place transfer to the proposed location. The Board, by resolution dated September 11, 1974 denied his application for the reason that: "It is the unanimous opinion of this Board that it would not be in the best public interest to permit a package liquor store to locate in the new shopping mall wherein the premises sought to be licensed are situated..." This appeal followed.

At the de novo appeal heard in this Division, pursuant to Rule 6 of State Regulation No. 15, the Board introduced the

transcript of the testimony at the hearing before it, in accordance with Rule 8 of the said Regulation.

The Board received no testimony at its hearing and grounded its action entirely upon the introduction before it of the letter of the Paterson Redevelopment Agency hereinabove referred to.

At the hearing in this Division, the parties were permitted to introduce evidence and to cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15.

The Board offered the testimony of the Director of the Redevelopment Agency, John H. O'Malley, who described at length the program, currently underway, by which a present commercial slum is being upgraded into a modern mall area. Appellant's licensed premises are located in a building of ancient origin about to be demolished as part of that program.

This had been a retail food shopping center, but had become blighted over the past decades. It was an area saturated with taverns, most of which have since relocated. In fact, some moved as a result of this program.

The Development Agency seeks to introduce into the area food-oriented commercial operations with a view to revive its old history as a food center. He believed the business community is adamant about permitting liquor licensees to intrude into the area.

On cross examination, he admitted that liquor is an integral part of food purchases, hence the target of elimination of licenses was not directed at appellant. He further admitted the space presently occupied by the appellant's building (which is scheduled to be demolished) will become a parking lot.

One of the members of the Board, Martin Adolph, testified that he voted to deny appellant's application because the Board, when considering the matter, determined to abide by the recommendation of the Redevelopment Agency. The area was blighted and was sorely in need of a redevelopment program, hence the advice of the Agency was considered crucial. He admitted, however, that the thrust of the exclusionary policy was directed against taverns rather than liquor stores.

Board Secretary William W. Harris indicated, on a sketch prepared at the hearing, that there were six "C" licensees, taverns, and two "D" licensees, excluding appellant's premises, within the area encompassed by the redevelopment project. He explained that, although there was a definite effort to reduce

the number of plenary retail consumption licenses in the City, there was, as yet, no program developed under which the various licenses could be withdrawn.

Appellant, Manuel Munoz, testified that he had purchased the subject premises two years ago, at which time he was totally unaware of any plans the City had to redevelop that area. He saw no demolition undertaken prior to the current year but from some article he had read in the local paper his curiosity was aroused and in the Spring of 1974 he wrote a letter to the authorities making inquiry of the present plans. He received no direct response, but did receive the notice in the form of the letter of June 19, 1974.

His efforts to secure a new location bore immediate fruit when he learned of a store in a building directly around the corner from his present location. He further was advised that the owner did not intend to permit the occupancy by a food establishment, but would welcome a plenary retail distribution licensee as a tenant. An agreement was thereupon developed subject to obtaining Board approval of the transfer.

The dispositive issue in this matter is: Did the Board act reasonably and in the best interests of the municipality? It is basic that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in its exercise of reasonable discretion. If denied, on reasonable grounds, such reasonable action will be affirmed. Richmon Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (1946). A municipality may in its reasonable exercise of its discretionary power decide not to issue liquor licenses at specific locations. Fanwood v. Rocco, 33 N.J. 404 (1960).

However, "an owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer." Lakewood v. Brandt, 38 N.J. Sup. 462, 466 (App. Div. 1955).

Hence the determination of the instant matter pivots about the reasonableness of the Board's action. The Board admittedly relied upon the judgment of the Redevelopment Agency in making, as one of its expressed goals, the elimination of liquor licensed premises within the area to be developed. It unilaterally accepted such determination without distinguishing between retail consumption licenses and retail distribution licenses.

The Director of the Redevelopment Agency candidly admitted that purveying of alcoholic beverages for off-premises

consumption would not be inconsonant with the overall planning of proposed food distribution area. While he was opposed to the establishment of taverns in the area he did foresee a relationship between food sales for cooking and the sales of wines.

It could be assumed inferentially that some future supermarket could obtain the Agency's blessing in order to sell alcoholic beverages as a part of its grocery business. Hence, the mere independent sale of alcoholic beverages apart from an overall food selling business appeared to be objectionable because of potential on-premises consumption rather than off-premise consumption.

The building to which the appellant's license would be transferred is not part of the property taken by the Agency, although it appears to be about in the middle of the area. As the owner does not intend to permit a food handling establishment in his building, it is apparent that a business akin to food distribution would be required to most nearly carry out the objectives of the Agency. The appellant's business is one such type; yet the Board member, who testified on its behalf, failed to equate the appellant's business with the desired objectives. It is candidly admitted that the Board merely followed the Agency's recommendation that no plenary retail licensees be permitted to enter the area, notwithstanding the fact that, in reality, the appellant was already in that area.

Upon being apprised of the prospective demolition of the building in which his licensed premises was housed, appellant was faced with a choice afforded to him under the local ordinance. Alternatively, he could have sought to transfer his premises to another location, not within 750 feet of any existing licensee, or, as his was a "hardship" situation, he could apply for a transfer within 1,500 feet of his present location without regard to the proximity of other licensees.

As Paterson is presently saturated with plenary retail licenses it is extremely difficult, if not impossible, to effectuate an approved transfer within the general terms of the ordinance; hence, the "hardship" provision has been inserted.

From the detailed description of the project area, it was readily apparent that no location for prospective transfer within it would have received municipal or Board approval. Hence the Board, by its determination not to approve transfers within the project area, made a nullity of the "hardship" provision.

The appellant was limited under the "hardship" provision of the local ordinance to transfer his license within 1500 feet of his existing license. Board Member Adolph was asked:

"Now, you know Paterson. Fifteen hundred feet from the present location, would that make any spaces available for such a transfer?"

"I couldn't answer that question, yes or no."

"The Board did not investigate that?"

"No, we did not."

Hence, any transfer beyond 1500 feet would remove the benefit of the hardship provision from appellant. By not taking the distance requirements into consideration, it was apparent that no thorough investigation of appellant's circumstances was made by the Board, the lack of which reduces its conclusions to unreasonableness.

In sum, I find that the appellant has met his burden of establishing that the action of the Board was erroneous and should be reversed, pursuant to Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Board be reversed, and that the said Board be directed to grant the said place-to-place transfer in accordance with the application filed therefor.

Conclusions and Order

Written exceptions to the Hearer's report were filed by respondent, and answering argument to the said exceptions was filed by appellant, pursuant to Rule 14 of State Regulation No. 15.

Respondent takes exception to the Hearer's finding that the Board based its decision to deny the application for transfer "solely upon the recommendation of the Paterson Redevelopment Agency."

This is a misstatement of the Hearer's report. The Hearer did not state that the Board acted "solely" upon the Agency's recommendation, but that the "advice of the Agency was considered "crucial!'" This is clearly manifested in the testimony of Martin Adolph, a member of the Board, as well as in the comments made during the hearing before the Board.

John H. O'Malley, the director of the said Redevelopment Agency, who testified at this appeal hearing, acknowledged that he sent a letter wherein he expressed "strong objection" to the proposed transfer.

In his letter, he asserts that "businessmen in the area" object to the transfer, but the record is barren of any affirmative testimony by any objectors in support thereof.

This is in contrast to the situation in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 293 (1970) which involved a place-to-place transfer of a plenary retail consumption license. In Lyons Farms, there were substantial numbers of persons who were hostile to the licensee's request for enlargement of existing premises. The Court held that where their views were reasonably associated with the dangers to public health, safety, morals and general welfare: the regulatory body does not act arbitrarily in honoring them.

In the instant matter, we are concerned with the proposed transfer of a retail distribution license; with a package goods facility, which has been in operation in this area. There has been no public outcry against the proposed transfer, as evidenced by the absence of objectors at the hearings both before the Board and in this Division.

Respondent further cites Fanwood v. Rocco, 33 N.J. 440 in support of his contention that the Board's action should be affirmed where its action is reasonable. However, Fanwood is clearly distinguishable in its factual complex from the instant matter.

In Fanwood, the appellant sought a place-to-place transfer of his plenary retail liquor license from a remote point of the municipality to its business center, where no liquor facilities existed. The Court held that the local issuing authority acted reasonably in denying the transfer because it honored local sentiment favoring keeping that area free of taverns and package goods stores.

In the matter sub judice, this area does have taverns and package stores; the appellant was located in the area; the proposed transfer site is just around the corner, a few hundred feet from his present operation; and as noted above, there was no strong local sentiment opposed to the proposed transfer.

Moreover, this is a hardship situation which, in substance, is analogous to that presented in Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965). The licensee there was forced to relocate when a public agency took possession of its property. In reversing the local issuing authority's denial of its application for a place-to-place transfer, the Court found that a proper inference could be reasonably drawn from the evidence that the action was intended to reduce the number of licenses in the community.

The court cited (as did the Hearer in the instant matter), Lakewood v. Brandt, supra, to the effect that a licensee is entitled to "some measure of protection in connection with a transfer." It also noted that, in Fanwood v. Rocco, supra (59 N.J. Super. at p 322), in commenting upon the application of Lakewood

case to the factual situation then under review, the court interpreted the quoted text to mean that "there are equities in favor of a holder of a license which an applicant for a new license cannot claim, which should be considered together with all the other factors in the case.".

Finally, the Board asserts that appellant could "reasonably transfer its license to another location outside the mall area, if he so desired." The facts are to the contrary. Board Secretary Harris indicated that, with the over-abundance of liquor facilities in Paterson, it would be virtually impossible to find a suitable site that would be in compliance with the footage limitations of the subject ordinance.

I have analyzed and evaluated the exceptions and find them lacking in merit.

Thus, having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Hearer's report, the exceptions by the Board with respect thereto and the answer to the said exceptions, I concur in the findings and conclusions of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 4th day of February 1975,

ORDERED that the action of the respondent, in denying appellant's application for a place-to-place transfer of his plenary retail distribution license from 42 Washington Street to 15 Fair Street, Paterson, be and the same is hereby reversed; and it is further

ORDERED that the respondent be and is hereby directed to grant the said transfer in accordance with the application filed therefor.

Leonard D. Ronco
Director

4. APPELLATE DECISIONS - HENDA v. PATERSON.

Henda, Inc.)	
Appellant,)	On Appeal
v.)	CONCLUSIONS and ORDER
Municipal Board of Alcoholic Beverage Control for the City of Paterson,)	
Respondent.)	

Goodman and Rothenberg, Esqs., by Robert I. Goodman, Esq.,
Attorneys for Appellant,
Joseph A. LaCava, Esq., by Ralph L. DeLucia, Jr. Esq.,
Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) which, on June 26, 1974, suspended appellant's plenary retail consumption license for premises 55 Church Street and 187 Market Street, Paterson, commonly known as the Alexander Hamilton Hotel, for thirty days, effective July 13, 1974 upon finding it guilty of a charge alleging that, on January 17, 1974 it permitted immoral activity upon the licensed premises, i.e., "permitted known convicted prostitutes to frequent its licensed premises" so that the premises were operated as a nuisance, in violation of Rule 4 of State Regulation No. 20.

Appellant's petition of appeal contended that the charge was not proven in that the evidence presented before the Board was not sufficient to support the said charge. The Board responded by denying this contention and by affirmatively averring that its finding was reasonable and based upon evidence adduced before it.

The suspension imposed was stayed by the Director of this Division by Order of July 11, 1974, pending the determination of this appeal.

A hearing de novo was held in this Division pursuant to Rule 6 of State Regulation No. 15 at which the parties were permitted to introduce evidence and to cross-examine witnesses. Additionally, a transcript of the proceedings before the Board was made part of the record in accordance with Rule 8 of the said regulation.

At the hearing, the Board relied upon the evidence contained in the transcript of the proceedings before it. This transcript contained testimony of three police officers of the City of Paterson. Officer Harold Pegg related an incident which occurred on January 18, 1974, in which he investigated a complaint of a man who, upon visiting appellant's hotel (included as part of the licensed premises) in the company of a prostitute, alleged to have been robbed of several hundred dollars. A girl in whose name the room was registered and who was later arrested, admitted that she had permitted use of the room to the prostitute.

Officer Pegg admitted having received full cooperation in his investigation from the hotel owner. No testimony was offered to show appellant had any knowledge of the presence of the prostitute in the hotel at that time.

Sergeant Salvatore Cossari of the Vice Squad corroborated the same incident. He added that girls offering themselves for prostitution were often seen on the sidewalk in front of and in the lobby of the hotel. From a list of known prostitutes, four had given their addresses as the Alexander Hamilton Hotel. In his investigations of vice he admitted that the hotel owners were "very, very cooperative." No arrests for prostitution were made inside the hotel.

Another Vice-Squad detective, Raymond Zdanis, testified that he would frequently receive calls from the hotel owner indicating the presence of prostitutes either in the lobby or outside of the hotel. As a result of such notice several arrests were made. He described the efforts of the hotel owners as very cooperative. The following question was posed to him:

"Detective, is it your testimony that on each of these occasions for each of these girls, the arrests were prompted by Mr. Lochman's [the hotel owner] calls?"

to which he responded:

"Yes, sir. These are only the times when a prostitute was at the hotel, four or five times, on calls from Mr. Lochman."

At the hearing on appeal in this Division, the appellant introduced testimony of Lieutenant Walter W. Porter, a detective attached to the Prosecutor's Office of Passaic County. He corroborated the testimony of the officers who testified before the Board, that the hotel owner was extremely cooperative with the authorities in an attempt to rid the hotel of prostitutes. This testimony was further corroborated by testimony of Passaic County Sheriff's Detective William J. Purdy, and by Detective Frank J. Stevens, formerly attached to the Vice Squad

of the Paterson Police Department.

Paul Lachman, the major stockholder of appellant corporation and considered in the previous testimony as the "hotel owner", testified both before the Board and at the hearing in this Division. He vigorously asserted that he has been most anxious to rid his hotel of prostitutes, and that investigations by the police originated from his calls to the police and by information supplied by him to the police department.

From the testimony adduced herein, it is apparent that the central core area of Paterson has been in significant decline for the past several years. Prostitution had become rampant and two licensees whose premises were located in close proximity to the Alexander Hamilton Hotel had their licenses revoked because of prostitution activity.

The hotel itself, once a venerable hostelry in this area, finds itself a victim of this sociological evil. The testimony of all of the officers, both for the Board and appellant, corroborated the continuous effort by the management of the hotel to aid the police in ridding itself of the prostitutes. With the exception of one night manager, who was summarily discharged, the action of the hotel staff was highly cooperative and in many incidents, the presence of prostitutes was revealed to police by the hotel authorities and arrests followed.

Both Rule 4 and Rule 5 of State Regulation No. 20, require that a charge of "allowed, permitted and suffered" be proven as a concomitant part of such charge. It is quite apparent and I so find, that the appellant's agents did not allow, permit or suffer "convicted prostitutes" to frequent its premises and, to the contrary took every possible means to eliminate prostitutes and prostitution activity from the hotel.

I, therefore, conclude that the appellant has sustained its burden of establishing that the action of the Board was erroneous and should be reversed pursuant to Rule 1⁴ of State Regulation No. 15. Accordingly, it is recommended that the action of the Board be reversed.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the respondent Board pursuant to Rule 1⁴ of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Hearer's report and the exceptions filed thereto which I find have either been correctly resolved in the Hearer's report or are lacking in merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of February 1975,
ORDERED that the action of the respondent, in finding
appellant guilty of the charge preferred herein, be and the same
is hereby reversed, and the appeal be and the same is hereby
dismissed.

LEONARD D. RONCO
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary)
Proceedings against)
Allamuchy Liquors, Inc.)
t/a Allamuchy Liquors)
Main Road)
Box 113, Allamuchy Township)
PO Hackettstown, N.J.,)
Holder of Plenary Retail Distribu-)
tion License D-1, issued by the)
Township Committee of the Township)
of Allamuchy.)
Malcolm H. Greenberg, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

A Supplemental Order dated February 13, 1974 was entered herein suspending the license for the balance of its term, viz., midnight, June 30, 1974, commencing on Tuesday, February 26, 1974 after licensee was found guilty of the charges alleging that (1) it failed to reveal in its application that Lewis Lo Presti was the indirect holder of 50% stock of the licensee and had an interest in the licensed business; (2) it permitted the said Lo Presti, an unlimited solicitor's permittee to have a business connection with it; and (3) it permitted Lo Presti to exercise the privileges of the license. The order further provided that the licensee, or any bona fide transferee of the license or any renewal of the said license to apply to the Director, by verified petition, for the lifting of the suspension whenever the unlawful situation has been corrected, but in no event, sooner than thirty days from the commencement of the said suspension.

A petition by the licensee to have the said suspension lifted was denied by the then Director on March 27, 1974.

Upon appeal filed from the Supplemental Order of March 27, 1974 the Appellate Division of the Superior Court by order dated April 18, 1974 stayed the said suspension pending the determination of the appeal. (Docket #A-1990-73). This appeal is pending.

It appearing from the verified petition submitted by the licensee that the unlawful situation has been corrected, I shall grant the petition requesting termination of the suspension, effective immediately.

Accordingly, it is, on this 31st day of January 1975,

ORDERED that the said suspension heretofore imposed in this matter be and the same is hereby terminated, effective immediately.

Leonard D. Ronco
Director

6. STATE LICENSES - NEW APPLICATIONS FILED.

Hub Beer Distributors, Inc.
1181-1193-1195 Fairview St.
Camden, New Jersey

Application filed March 19, 1975
for additional warehouse license
covering premises N. E. Corner of
Mt. Ephraim Avenue & Line Street,
a/k/a 1001 Line Street, Camden,
New Jersey, operated under Limited
Wholesale License WL-43.

Vallese Beverage Inc.
3501 Park Boulevard
Wildwood, New Jersey

Application filed March 20, 1975
for person-to-person transfer of
State Beverage Distributor's
License SBD-188 from Sellright
Beverage Co., Inc.

Leonard Kreusch, Inc.
1 Caesar Place
Moonachie, New Jersey

Application filed March 21, 1975
for limited wholesale license.

Leonard D. Ronco
Leonard D. Ronco
Director